

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FRANK R. FERRARELLI, : Case No. 1:07cv685
Plaintiff, : (Judge Barrett)
v. :
FEDERATED FINANCIAL, :
Defendant. :

PLAINTIFF'S OBJECTIONS TO JURY INSTRUCTIONS

THE INSTRUCTION AT THE END OF INTERROGATORY (D) IS INCORRECT.

The jury may well answer “Yes” to (A) and (B) but “No” to (C) and (D), finding negligence but no willfulness. The direction at (D)(1) gets them correctly to (E) to award damages. However, if they read on to (D)(2) they may enter a verdict for Defendant, since they answered “No” to (C). It is the “and/or” which causes the problem.

One way to avoid this is to have the direction at (D)(1) continue, “and pay no attention to (2) below.” A second way is to change (D)(2) to read: “If the answer of all jurors to both Interrogatory (B) and Interrogatory (D) is ‘no,’ do not answer etc.” A third way is: “If the answer of all jurors to Interrogatories (A) and (C) is ‘no,’ do not answer etc.”

While Plaintiff recognizes that there may be other possibilities and that an examination of the answers to the first four interrogatories might cure any mistake, he objects to the Interrogatory as written.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2009, a true and accurate copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed to those parties by certified mail who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Steven C. Shane